

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2665

IN THE MATTER OF:

Served February 15, 1985

Application of RED TOP COACH, INC.,)  
to Transfer Certificate No. 26 to )  
NATIONAL COACH WORKS, INC. )

Case No. AP-84-45

By application filed December 11, 1984, Red Top Coach, Inc., a Virginia corporation ("Red Top"), seeks Commission approval to transfer by sale its Certificate of Public Convenience and Necessity No. 26 to National Coach Works, Inc., a Delaware corporation ("National"). That application is described in Order No. 2647, served January 9, 1985, and that order is included herein by reference. Inter alia, Order No. 2647 scheduled this matter for public hearing on February 21, 1985.

On January 25, 1985, Red Top and National filed a motion pursuant to the Compact, Title II, Article XII, Section 12(d), for temporary approval for National to operate pursuant to Certificate No. 26 of Red Top. The motion states that Red Top had incurred operating losses of approximately \$240,000 during the period May-December 1984, and that Red Top's management had determined to terminate all operations as of January 31, 1985. The motion further states that during the 3-month period August-October 1984 Red Top estimates that its WMATC charter service produced revenues of \$94,434 after payment of Commissions thereon, demonstrating that Red Top has been providing significant transportation service. Movants state that a sustained period of non-activity could result in destruction or impairment of the value of Certificate No. 26 and that the unavailability of service theretofore provided would adversely affect the travelling public.

Red Top and National have entered into an agreement under which, upon Commission approval, National would pay Red Top \$100 a month to operate its Certificate No. 26 "as modified by Order No. 2647, served January 9, 1985." \*/

Submitted along with the motion was a proposed tariff of National pursuant to which the service would be operated. The tariff

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\*/ Order No. 2647 alluded to the modification of Certificate No. 26 but did not, itself, modify that Certificate. The modification was effected by Order No. 2645, served December 26, 1984.

would constitute an adoption of the charter provisions and rates of the present Red Top tariff.

A supplement to the motion was filed on February 7, 1985. The supplement states that National is an existing organization with an established management experienced in the transportation business and presently engaged in the repair and rebuilding of motor bus equipment from which it derived revenues of over \$2 million in the first eight months of 1984. The firm is profitable and has substantial liquid capital assets.

National has recently been granted authority by the Interstate Commerce Commission in Case No. MC-179067 to transport passengers in charter and special operations. National states that it has complied with ICC's order and expects its certificate to issue shortly. National further states that it has insurance for such operations in excess of WMATC requirements.

Attached to the supplement is a list of equipment which National proposes to lease from an affiliated company. That list shows five 47-passenger motor coaches of 1979 vintage, registered in the District of Columbia.

Finally, National states that it will employ experienced motor bus drivers and that such drivers are known by the company's management as being currently available in the Washington area.

The Compact, Title II, Article XII, Section 12(d) provides:

Pending the determination of an application filed with the Commission for approval of a consolidation or merger of the properties of two or more carriers, or of a purchase, lease, or contract to operate the properties of one or more carriers, the Commission may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding 180 days of the operation of the carrier properties sought to be acquired by the person proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

The requisite application is pending, placing this matter within the Commission's discretion to grant the requested temporary approval if it appears that failure to do so may result in destruction of or injury

to such carrier properties (in this case, Certificate No. 26) or interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

Even though the revenues therefrom were apparently inadequate to sustain Red Top's operation, it appears that the company was providing substantial quantum of service, such that there is little, if any, question of dormancy either as to these operating rights or as to the demand for service. In these circumstances the existence of a certificate of public convenience and necessity creates a reasonable presumption of need for the services authorized therein.

We must be concerned with the fitness of the carrier proposing to take over operation of the certificate. Though National, according to its application, has never entered the passenger transportation market as an operating entity, it is clearly prepared to do so. It has already received a grant of operating authority from ICC, and it has applications pending before WMATC and the Virginia Corporation Commission. It is affiliated with experienced operating entities, has secured its insurance, and is prepared to secure equipment and operators. It is currently in the business of maintaining and rebuilding motor bus equipment. The company appears to be operationally fit. The company also appears to have adequate financial substance to undertake the proposed operations. Although the company has no track record with regard to regulatory compliance, it has made all the right moves to secure appropriate authorization for its proposed operations. We are comfortable at this stage with a provisional finding of fitness, subject to our subsequent findings in the transfer application.

We further find that a period of inactivity of weeks or months that may be taken in deciding the transfer application may interfere substantially with the future usefulness of Certificate No. 26 in the performance of adequate and continuous service to the public. Contacts with customers may become stale; ill will may result from inability to respond to requests for service; service would be neither adequate nor continuous.

Accordingly, we find that National has satisfied the requirements of the Compact, Title II, Article XII, Section 12(d) for a grant of temporary approval to operate Certificate of Public Convenience and Necessity No. 26. Of course, this creates no presumptions with regard to our subsequent determinations in the transfer application.

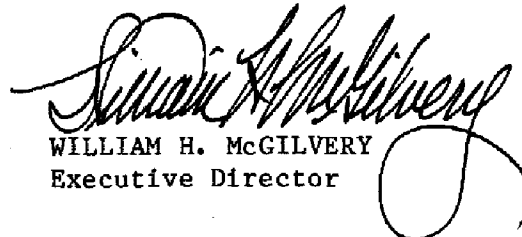
On February 11, 1985, The Airport Connection, Inc. ("TAC"), timely filed a protest to the transfer application, thereby becoming a formal party in this matter. Because the motion for temporary approval and supplement thereto were filed prior to the filing of TAC's protest, they were not contemporaneously served on TAC. Upon filing of TAC's

protest, staff counsel contacted applicants' counsel who agreed to serve the motion and supplement on counsel for TAC. For purposes of this order we have assumed that any carrier that would oppose the transfer would oppose temporary approval as well. TAC notes that National is under common control with Gold Line, Inc., a factor we have already taken into consideration. TAC believes a grant of the application would strengthen Gold Line's market position and substantially lessen competition in the Metropolitan District. Under Section 12(d) of the Compact we are simply preserving the future usefulness of Certificate No. 26 for a maximum period of 180 days while we make the necessary determinations with regard to the transfer application.

THEREFORE, IT IS ORDERED:

1. That National Coach Works, Inc., is hereby granted temporary approval to operate Certificate of Public Convenience and Necessity No. 26 as reissued pursuant to Order No. 2645, served December 26, 1984.
2. That National Coach Works, Inc., is hereby directed within 15 days of the date of service of this order to file with the Commission (a) two copies of its WMATC Tariff No. 1 as proposed in its motion, (b) an affidavit of compliance with Regulation No. 68 governing identification of motor vehicles, (c) a certificate of insurance in compliance with Regulation No. 62, and (d) equipment leases in compliance with Regulation No. 69.
3. That, upon compliance with the requirements of the preceding paragraph within the time set therefor or such additional time as may be authorized by Order, the Executive Director shall notify National Coach Works, Inc., in writing, that it may thereupon commence operations pursuant to Certificate of Public Convenience and Necessity No. 26.
4. That, upon written notice provided in accordance with the preceding paragraph, such temporary approval shall remain in effect for 180 days, unless otherwise ordered by the Commission.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director